

Athens Disposal Company, Inc. and Package and General Utility Drivers Local 396, International Brotherhood of Teamsters, AFL-CIO.
Cases 21-CA-28832 and 21-CA-29067

September 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On March 31, 1994, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply to the General Counsel's answering brief.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Athens Disposal Company, Inc., City of Industry, California, its officers, agents, successors, and assigns, shall take the action as set forth in the Order.

¹ The exceptions are limited to issues surrounding the discharges of Jesus Ramirez, Jesus Rosas, and Miguel Salas.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find no merit in the Respondent's exception to the judge's finding that it violated Sec. 8(a)(3) and (1) of the Act by discharging employee Miguel Salas. The Respondent contends it discharged Salas because of a serious customer complaint, a negligent accident, and numerous overweight citations. We note first that the judge completely discredited the Respondent's witnesses as to the severity of the complaint and that other employees who received such complaints were not discharged. Similarly, the judge found that others who had a combination of complaints and accidents within a short period of time likewise were not discharged. Finally, we note that the Respondent's secondary reason—that Salas had too many overweight tickets in 1992—resulted in only three citations during that period. Not only was Salas not disciplined for his truck overweights, he was recommended for a bonus on July 9, 1992, less than a month before his discharge. Accordingly, we adopt the judge's finding that Salas' discharge violated the Act.

Salvador Sanders, Esq. and *Robert DeBonis, Esq.*, for the General Counsel.

Kyle D. Brown, Esq. (Hill, Farrer & Burrill), of Los Angeles, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The unfair labor practice charges in the above-captioned matters were filed by Package and General Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL-CIO (the Union) on July 22 and November 27, 1992, respectively.¹ Based on said filings and after an investigation, on January 29, 1993, the Regional Director of Region 21 of the National Labor Relations Board (the Board) issued a consolidated complaint, alleging that Athens Disposal Company, Inc. (Respondent) engaged in acts and conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent timely filed an answer, essentially denying the commission of any of the alleged unfair labor practices. Pursuant to a notice of hearing, I held a trial in Los Angeles, California, on July 12, 13, and 14, 1993. At the hearing, all parties were afforded the opportunity to examine and to cross-examine witnesses, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. The documents were filed by counsel for both parties and have been carefully considered. Accordingly, based on the entire record herein, including the posthearing briefs and my observation of the testimonial demeanor of the several witnesses, I issue the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a California corporation, has been engaged in the business of trash removal for commercial, residential, and governmental customers in the Southern California area and has maintained an office and truck depot facility in the City of Industry, California. In the normal course and conduct of its aforementioned business operations, during the 12-month period immediately preceding the issuance of the instant consolidated complaint, Respondent provided services, valued in excess of \$50,000, directly to customers located within the State of California, each of which customers, during the same period of time, purchased and received goods and products, valued in excess of \$50,000, directly from suppliers located outside the State of California. At all times material, Respondent has been, and is, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

At all times material, the Union has been, and is, a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The consolidated complaint alleges that Respondent engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act by discharging four employees (Trinidad Rodriguez, Jesus Ramirez, Jesus Rosas, and Miguel Salas) because each assisted the Union and engaged in protected

¹ Unless otherwise noted all events herein occurred in calendar year 1992.

concerted activities and that Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act by engaging in surveillance of its employees' union activities, interrogating employees as to their union sympathies and activities, threatening to terminate employees because of their union sympathies and activities, and conveying the impression to an employee that he had been terminated because of his support for the Union. Respondent denied the commission of any unfair labor practices and contended that the above four individuals were terminated for cause.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The record establishes that Respondent is a family-owned State of California corporation with Ron Arakelian Sr. owning approximately 60 percent of the outstanding shares, his sons, Ron and Michael,² owning approximately 23 percent and 11 percent respectively, and other family members owning the remaining shares. Servicing 25 cities in the Southern California area from its office and truck depot facility in City of Industry, Respondent's business operations entail the collection, disposal, and recycling of solid wastes and refuse and the performance of municipal street sweeping, and, with regard to its trash collection duties, Respondent provides services to both commercial and residential customers. The record further establishes that Dennis Chiappetta is Respondent's general manager and ultimately responsible for all business operations, including the hiring and discharging of employees; that Terry Schneider is Respondent's assistant general manager; that Antonio Rodriguez is the operations manager; and that reporting to Rodriguez are Field Supervisors Steve Uribe, Frank Uicab, Caesar Gonzales, and Oscar Zamora. Moreover, with regard to Respondent's supervisory hierarchy, Guadalupe Diaz is responsible for overseeing the truck yard and routing, and Dal Hile and Al Arzola supervise the truck and equipment repair and maintenance shop.³

The record reveals that, in or about February, agents of International Brotherhood of Teamsters Local 495 commenced an organizing campaign among Respondent's drivers and helpers, conducting three or four organizing meetings at an employee's home over the next 3 months. Several employees, including alleged discriminatee, Trinidad Rodriguez, attended these meetings and signed authorization cards for Local 495 and, as the record also reveals, another organizing meeting was scheduled for Saturday, June 13, at the meeting hall of Teamsters Union Local 420, located on Peck Road in the city of El Monte. There is no record evidence that, prior to June 13, Respondent's supervisors were aware of or engaged in surveillance of any of the organizing meetings; however, according to Rodriguez, in or about February, he was in the supervisors' office and overheard a conversation between Frank Uicab and another employee during which the latter said that a union would be good and that one "was going to go in there." Uicab replied that it would not happen

because Respondent paid them well and then advised the employee "Let's not get into it because whoever gets into [the Union] going to get fired."⁴ The record further reveals that, in or about May, while Local 495's organizing campaign of Respondent's employees continued, the Union commenced an organizing campaign among the drivers and helpers, employed by West Covina; that an initial organizing meeting for the West Covina employees was held on May 22; that, the said meeting, having previously formed "suspicions," given their common ownership, that West Covina and Respondent were related companies, Raul Lopez, the chief operating officer of the Union, asked questions about the apparent "connection" between the companies and "confirmed" his suspicions; that a second organizing meeting for the West Covina employees was scheduled for the morning of June 13 at Parque del Norte (North Park) in the city of West Covina; and that, apparently unaware, at that point, of Local 495's ongoing organizing campaign, Lopez decided to invite Respondent's drivers and helpers to attend.⁵

There is no dispute that, as scheduled, the next meeting between representatives of the Union and West Covina's employees occurred on Saturday, June 13, at North Park⁶ in the picnic area; that it began shortly after 12 p.m.; that Raul Lopez and Lorenzo Amaya conducted the meeting for the Union; that at least 25 West Covina employees attended; and that some of Respondent's employees, including alleged discriminatee Jesus Rosas, attended. While Respondent concedes that two separate instances of surveillance by its supervisors occurred, exactly what conduct these incidents entailed is in dispute. As to these, Raul Lopez testified that, in the midst of a discussion of what effects the employees of West Covina could expect from an organizing campaign, Respondent's employees said that one of their Company's supervisors was "cruising the area" in a pickup truck and, moments later, "one of the employees noticed that the pickup had parked on Foxdale" 150 to 200 feet from where the employees were standing. Describing the truck as being a black Chevrolet with silver or white striping, Lopez testified that he observed the driver inside, sitting with his hands "cupped

⁴Uicab specifically denied the conversation, and Rodriguez failed to mention this conversation in his pretrial affidavits. Further, the General Counsel does not contend that the conversation was unlawful but, rather, that such establishes Respondent's knowledge of the employees' interest in union representation and its unlawful animus in that regard.

⁵The record is unclear as to the manner in which the Union invited Respondent's employees to attend the North Park meeting. While Lopez insisted that the meeting was publicized by "word of mouth," a West Covina employee, Jose Arreola, testified that leaflets were distributed, setting forth the time, date, and location of the North Park meeting. Clearly, inasmuch as Respondent's supervisors admit seeing flyers, publicizing the June 13 North Park meeting, written notice of it was distributed among Respondent's employees. Moreover, as will become clear, there is no dispute that, at least as of the day before, Respondent's supervisors were aware of the scheduled June 13 Peck Road union meeting.

⁶North Park, located at the intersection of Rowland and Sunset Streets, appears to be a small, neighborhood-type park of a square block in size, consisting of tennis courts, a Little League baseball field (with bleachers along the first and third base lines), and a grass picnic area. A parking lot, with entrances to and from Sunset Street, is located behind the baseball field, which is separated from the picnic area by a line of trees. Foxdale Street is the road which runs parallel to Sunset and adjacent to the picnic area.

²Ron Arakelian Jr. and Michael Arakelian are each 50-percent owners of another refuse company, Arakelian Enterprises, Inc., d/b/a West Covina Disposal and City Refuse Service (West Covina).

³Respondent admitted that Rodriguez, Uribe, Uicab, Gonzales, Hile, Arzola, and Diaz are supervisors within the meaning of Sec. 2(11) and its agents within the meaning of Sec. 2(13) of the Act.

toward his face” on either side of his eyes, and that, as he and Amaya began walking toward the truck, the driver made a U-turn and drove away. Then, Lopez testified, about 15 or 20 minutes later, one of the employees said that he recognized a red, pickup truck, owned by Respondent, in the parking lot, and, at the same time, other employees shouted that they recognized two of Respondent’s supervisors photographing the meeting. Lopez turned and observed two individuals, standing “pretty much in plain sight” in the row of trees approximately 150 to 200 feet away from the group, one taking pictures with a video camera and the other using what appeared to be a 35-millimeter camera with an extended telephoto lens. Suddenly, according to Lopez, the assembled workers began running toward the two men, and the two men immediately began running toward the parking lot. Lopez and Amaya ran toward their car, which was parked on the street and drove toward the parking lot entrance on Sunset. As they did so, Lopez observed one of the workers struggling with one of the asserted supervisors beside the passenger door of the pickup truck. The latter broke away, climbed inside and closed the door, and the red pickup drove away. With regard to the two alleged instances of surveillance of this North Park meeting, former West Covina employee Mario Rubio, who stated that he recognized three or four of Respondent’s employees at the meeting,⁷ testified that “we were talking in a group when suddenly one of the members of the group looked behind and saw two people . . . with a camera.” Rubio turned, and saw two persons near a tree 40 to 45 feet from the bleachers of the Little League baseball field. “One was squatting down a little, the other one was standing [with] the camera. . . . I notice it was a video camera,” and the photographer was pointing it “toward the group.”⁸ According to Rubio, when he initially observed the two men with the video camera, they were slightly more than the length of a soccer field from the site of the meeting, and Respondent’s employees identified the photographers as being from their company. Then, according to Rubio, someone pointed out a red pickup truck in the parking lot. The group began walking toward it, and, as they did so, the two men with the video camera, who were identified by Respondent’s employees as being from their company, also began running toward the truck. The two men arrived at the truck first, and both got inside, with the one holding the video camera getting into the passenger seat. He appeared to point the camera toward the workers, who were running toward the pickup truck. As Rubio and the others approached, “we asked [the photographer], what are you doing with this camera. He told us, move away from here, the other man started the truck and they left,” almost running down one of the workers who had his hands on the passenger door.⁹ Rubio testified further that, no more than 5

minutes later, he observed a person, who was parking a beige colored pickup along the street adjacent to the park no more than 25 feet from the group. “Then I hear somebody state that he belongs to Athens. I was looking at this. When Raul finds out, he and the other Union representative started to walk toward the truck. When the person in the pick-up noticed . . . he left immediately.”

Several other former West Covina employees also testified regarding the alleged instances of surveillance of the June 13 North Park meeting. Jose Arreola testified that the first involved a photographer, who, the group of employees observed, was “taking pictures with a camera with a long lens” while standing beside a white Chevrolet pickup truck, which was parked on the street. The photographer, who was approximately 150 feet from the group, had his camera pointed at them. Arreola added that Respondent’s employees, at the meeting, identified the person as their supervisor, Tony Rodriguez. Later, according to Arreola, he observed two persons underneath a tree 150 feet from where the employees were standing, with one taking pictures, with a video camera, of the group. After watching him for approximately 5 minutes, the assembled employees began chasing the photographer in order to take the camera from him. Thereupon, the two men began running toward a pickup truck in the parking lot. Arreola reiterated that the camera was a video camera and stated that, as the chasing employees reached the truck, the photographer was closing the passenger door, “and then they hit us with the door. We tried to take the camera away from them. At that time he put it into reverse fast and they just put the truck on top of us and took off.” Concluding, Arreola testified that two of Respondent’s employees identified the two men as being “supervisors from Athens.” Martin Santiago testified that he observed someone taking photographs and another taking pictures with a video camera. As to the latter, for 5 minutes, he observed two people standing beneath a tree 100 feet from the group, with one using the video camera to take pictures of the group.¹⁰ “Someone said they were supervisors from Athens” and “several went over to where they were. When [the two asserted supervisors] saw we were going over there, they ran toward their pickup. . . . One of [the group] got really close and when they opened the door he hit him . . . and knocked him out. And they got in and then took off fast.” With regard to the latter point, during cross-examination, Santiago admitted he was told what happened and did not see the incident at the door of the pickup truck. As to the person taking photographs, Santiago testified that he was inside a pickup, which was parked on the street, approximately 100 feet from the employees, and that, when the union officials walked toward the truck, it drove away. During cross-examination, Santiago conceded this photographer was not mentioned in his pretrial affidavit.

Ruben Real testified that he arrived late for the North Park meeting on June 13, but “when I got to the meeting I noticed two persons with a camera . . . underneath a tree” approximately 100 feet from the group. According to him, the

⁷He knew them to be Respondent’s employees “because I used to see these people at the dump site.”

⁸Rubio was certain the camera was a video camera as “part of the camera was resting on his shoulder and part of the camera was in his hand. He was pointing it.”

⁹During cross-examination, Rubio reiterated that the photographer was using a video camera as “the lens was a little long” and “to me it was a video, the way he was holding it, the way he was using it.” Then, Rubio was confronted with his pretrial affidavit, wherein he mentioned only that the camera had a long lens and failed to mention that it was a video camera. Also, during cross-examination,

Rubio said that, in order to return to the red pickup truck, the two men with the camera had to walk around the bleachers of the Little League field.

¹⁰During cross-examination, Santiago reiterated that the camera was, in fact, a video camera—“At that distance . . . you could see it was a video camera . . . because they have it on their shoulder.”

camera was a video camera, which was "pointed toward the group." Suddenly, those present "started to run" toward the two men, who, upon noticing the group moving in their direction, began running to the parking lot. After the members of the group returned to the meeting site, Real testified, one told him "there was a foreman from Athens." During cross-examination, Real reiterated that, although he could not say the brand, the camera, used by the two men, was a video camera. Thereupon, confronted by his pretrial affidavit wherein he stated he did not know what type of camera the men used, Real stated that his reference, in the affidavit, was to the brand name and not to the fact that the camera was a video camera. Finally, with regard to Real, he did not observe anyone else with a camera, taking photographs of the organizing meeting. Jesus Arreola testified that he observed two men, standing by some trees "around a 100 feet" from the meeting site and taking pictures of the group with a camera of "the kind for videos." He added that coworkers noticed the picture taking; "[the two men] realized and they ran and then we run after them. . . . [T]hey ran and they went to a pickup truck" While some workers got "right at the truck," the cameramen were able to escape "fast," and, while Arreola had never seen either of the men previously, Respondent's employees said they were their company's supervisors.¹¹ Arreola further testified that he also observed, "some distance" away, two men in a pickup truck, taking still pictures of the group. According to Arreola, the pickup truck "was moving and then when . . . the ones from the Union . . . wanted to go speak with them . . . [the photographers] saw that they were coming, so then they left." Later, in his testimony concerning this incident, Arreola conceded that he only observed the two men and not a camera, but "my co-workers saw it and they said." As with the two men with the video camera, Arreola was unable to recognize the two men in the pickup truck, but "the ones from Athens said they were supervisors from Athens."

Carlos Garcia Sanchez testified that the only person, whom he observed with a camera on June 13, was an individual, who was approximately 20 feet from the meeting site and who was identified by Respondent's employees as being one of their company's supervisors, taking pictures with a photographic camera, attached to which was a long lens. Also, according to Sanchez, at another point during the meeting, while he never observed the camera, several employees said that someone was taking pictures of the meeting with a video camera. His attention was drawn to two individuals, who "were really far away" near the parking lot. Several of the group, including Sanchez, proceeded to run after the two men, but "they got in [a pickup] truck and then they left real fast." Efrain Carrillo testified that, soon after the meeting began, he observed a brown pickup truck park on one side of the street, adjacent to the meeting site. Someone said that the person in the truck had a camera, and Lopez and Amaya began walking toward the truck. However, "[the driver] did not want to wait for them so he left." Carrillo further testified that, no more than 10 minutes later, one of the workers

said someone was videotaping them. All of those present turned to look and "we saw [two persons] standing . . . about 100 feet" away under a tree. "[Two males] were together, one next to the [other], blocking the other so they can take video." According to Carrillo, the camera was "a video-taking camera," in which large cassettes are used.¹² After no more than a minute, the workers began moving in the direction of the two men, and the latter began running toward a parking lot, in which a pickup was parked. Before they could drive away, some of the employees managed to "[place] themselves in front of the vehicle to ask them what they were doing there. Then, [the driver] . . . turned the pickup on and they practically run over [the workers]" while driving away.

Sergio Carrillo testified that, at some point during the June 13 meeting, he observed two individuals arrive in a pickup truck, park no more than 100 feet from the site of the organizing meeting and, while remaining inside the truck, one begin taking pictures of the meeting with a video camera. Five minutes later, according to Carrillo, he observed a beige pickup truck park approximately 100 feet behind the other and the driver begin taking pictures of the meeting with a photographic camera. Finally, after being asked by counsel for the General Counsel if he attended the North Park union meeting on June 13, Antonio Arreola testified, during direct examination, that the meeting was observed by supervisors from Athens Disposal Company and that he knew the individuals were from Respondent as "I myself recognized them because I had seen them before." Elaborating, Arreola stated that "there were two hidden behind a tree" 200 feet away from the meeting, that they had arrived in a red pickup truck, and that one of the two men was taking pictures of the group with a video camera. Also, a third Respondent supervisor was taking pictures of the group from a pickup truck, which was parked across the street from the park. During cross-examination, Arreola was confronted with his pretrial affidavit, in which he stated that the picture taking was at the May organizing meeting, and admitted that such was correct. Further, Arreola admitted that his pretrial affidavit statement, that no employer surveillance occurred at the second organizing meeting in North Park, was also correct. Finally, during cross-examination, Arreola averred that the camera, utilized by the individuals behind the tree, was "the kind that take movies" and conceded that, rather than seeing it, he knows the supervisor, inside the pickup truck, had a camera "because . . . Raul told us." The final witness, with regard to surveillance at North Park, was alleged discriminatee Jesus Rosas. Asked if he saw anyone with a camera, Rosas testified, "What I saw was . . . two pickups from Athens Com-

¹¹ During cross-examination, Arreola reiterated that the camera utilized was a video camera—"the surest thing is that it must be a video camera," a "VCR" camera. As with Ruben Real, when confronted with his pretrial affidavit wherein he said he could not recall what kind of camera it was, Arreola stated that his reference was to the brand.

¹² During cross-examination, with regard to the camera, Carrillo said, "I can see the bulk of the camera only. . . . I think it was a video camera; it looks large to me." Thereupon, when asked if he could discern whether it was a video camera or a photographic camera, Carrillo replied, "no." He added that others said the camera was a video camera and, according to the witness, rather than holding the camera in front of his face, the photographer "was balancing this camera on his shoulder." Finally, while in his pretrial affidavit, Carrillo stated that he did not know what the type of camera being used, during redirect examination, he explained that he meant "because of the distance I was not able to distinguish it." He added that he believed the camera was a video camera as "it still looks somewhat larger so that's why I say it [was] . . . a video camera."

pany . . . a red pickup . . . and another pickup truck grey in color.” There were two people in the red pickup, which was parked in the parking lot, with the driver being Supervisor Frank Uicab. Rosas did not recognize the passenger as “his face was covered . . . with a small video camera” with which he was taking pictures of the meeting. Rosas added that, at all times, he observed the two men inside the pickup and that he believes the passenger was using a video camera because “I saw this man holding [the camera] against his face with one hand.” Rosas continued, stating that, after a few minutes, everyone in the group “ran to the pick-up truck to try to get ahead of the man,” but “the pickup truck left the parking lot.” As to the grey pickup, Rosas recalled that it was driven by an Athens Disposal Company employee, Pedro Esparza. According to the witness, the grey pickup was also “inside of the parking lot” and the red and grey pickup trucks “left together at the same time.”

At the conclusion of the North Park meeting on June 13, Raul Lopez invited the West Covina employees to attend the meeting between Teamsters Union representatives and Respondent’s employees scheduled for 4 p.m. that day at the Teamsters Local 420 meeting hall on Peck Road in El Monte.¹³ Later that afternoon, accompanied by several of West Covina’s employees, Lopez went to the Local 420 meeting hall but discovered that the building was locked. Thereupon, the group went across the street to a gas station where they were joined by several of Respondent’s employees including alleged discriminatees Jesus Ramirez, Jesus Rosas, and Miguel Salas, thereby increasing the size of the group to approximately 30 employees. According to Lopez, while the people were milling about prior to the start of the formal meeting, someone said that an Athens Disposal Company supervisor had driven by for the second time, and Lopez’ attention was directed to a white pickup truck, which was stopped at a stoplight at the intersection of Peck Road and Durfee. Leaving the group, Lopez walked over to the pickup, in which a driver and a passenger were seated, and accused the driver of doing something illegal. He asked the driver to identify himself, and the man gave Lopez a name. The union official then returned to the group, informed them of the man’s name, and the individual, who had initially observed the vehicle passing by, said that such was not his name and that his real name was “Guadalupe.” While, apparently, Lopez did not observe the vehicle, allegedly driven by a Respondent supervisor, twice drive past the assembled employees, Sergio Carrillo¹⁴ testified that he saw the aforementioned pickup truck drive past the group and, shortly thereafter, drive past them again only to be stopped by a red

light.¹⁵ Particularly enlightening is the testimony of alleged discriminatee Jesus Ramirez, who stated that, on June 13, aware that a union meeting was scheduled, he arrived at the corner of Peck Road and Durfee at approximately 3 p.m., finding a group, composed of his fellow employees and West Covina’s employees, standing at a gas station across from the Teamsters 420 building. He parked his car across from the gas station and was crossing Peck Road when another employee, who had accompanied him, said that Ramirez’ supervisor was approaching. Ramirez turned to look and saw Guadalupe Diaz and Steve Uribe, the latter being his foreman, coming toward them in a pickup truck. “They were crossing the street inside of the vehicle looking to the group. . . . They went by and a few minutes later they returned. At that moment, the light turned red. [The union official] went to talk to them, and they had a conversation.” Shortly after the incident, according to Lopez, as everyone seemed “fidgety,” the group moved to Legg Lake Park in order to convene the formal meeting.

There is no dispute that Respondent’s supervisorial hierarchy was aware of the scheduled June 13 union organizing meetings and conspired to, and did, engage in surveillance of the North Park and Peck Road meetings; what is in dispute are the activities of Respondent’s supervisors. In this regard, the record discloses that, admittedly aware of the scheduled union meetings on June 13, Respondent’s supervisors conspired to engage in surveillance of their employees suspected union activities on that day and, in fact, engaged in such conduct. Thus, Tony Rodriguez, the Athens Disposal Company operations manager, testified that, in early June, a few of his company’s drivers showed him a flyer, announcing a union meeting for June 13; that, on June 12, he met with his field supervisors; and that, after a “discussion,” the decision was made “just to see if any of . . . Respondent’s personnel were involved in this meeting.” Therefore, the next morning, “just to see if any of our men were involved in it,” accompanied by a friend, who happened to be driving because “he likes pickups” and “he wanted to drive,” Rodriguez rode, as a passenger, in a company white Chevrolet Silverado pickup truck, to the site of the suspected union meeting at North Park in West Covina. According to the witness, they approached the park on Sunset, made a right turn onto Rowland, and drove past a group of people, who were “scattered” and resembled a “family gathering.” They turned left at the next corner and parked on the left or wrong side of the street, with the group about 100 yards to their left. Remaining for no longer than a minute and affording Rodriguez the opportunity to no more than glance at the group, the operations manager and his friend drove away.¹⁶ Rodriguez further testified that, no more than a half hour later, in the same pickup truck, he and his friend returned to North Park, driving past without stopping. Denying taking any photographs or getting out of the truck, Rodriguez said he did not recog-

¹³ While the record is not entirely clear, Raul Lopez became aware that Local 495 was engaged in an organizing campaign among Respondent’s employees subsequent to the aforementioned May 22 meeting. Thereafter, as the Union has Teamsters Union jurisdiction over the rubbish industry, Lopez spoke to the secretary/treasurer of Local 495 and, as a result, the latter relinquished the organizing of Respondent’s employees to the Union. Lopez further testified that the June 13 afternoon meeting had been previously scheduled by a Local 495 business agent and that he (Lopez) decided to attend in order to ease the transition.

¹⁴ Carrillo testified that Respondent’s employees identified one of the individuals in the pickup truck as a supervisor named Guadalupe.

¹⁵ Martin Santiago testified that he only observed the pickup truck, the driver of which was identified by one of Respondent’s employees as being a company foreman, drive slowly past the group and stop at a red light. The pickup truck was in the traffic lane closest to the assembled employees, and the driver was “looking at us.”

¹⁶ Describing the group as being comprised of from 12 to 15 people and some women, Rodriguez doubted that anyone, in the group, noticed him from such a distance and denied that anyone walked toward his pickup.

nize anyone and "saw no reason to go back and look any more."

Field Supervisor Frank Uicab admitted that Respondent's supervisors had "decided" to learn what was going on and that he was at North Park in West Covina on June 13 "to see if there was any Athens people at the so-called union gathering." According to Uicab's testimony at the hearing and a stipulation as to his testimony, at approximately 1 p.m., driving a company-owned, burgundy-colored pickup truck, he and Pedro Esparza, who was a "spare driver" and whom Uicab was taking home, arrived at North Park, drove completely around the park, observed a group of 30 to 40 people standing in the grass picnic area, turned into the parking lot and parked. Watching the group from the truck, Uicab was unable to recognize anyone. Then, carrying a company Polaroid camera,¹⁷ Uicab, accompanied by Esparza, walked to the third-base side of the baseball field and seated themselves in the bleachers, where other people were sitting and watching a Little League baseball game. From his location, according to Uicab, the 30 to 40 person group was "probably . . . a little bit more" than the length of a football field or 400 feet away. Uicab and Esparza sat and observed the group for approximately 5 minutes, during which time Uicab took two photographs but was unable to recognize anyone.¹⁸ As they climbed down from the bleachers, Uicab noticed that the members of the group had started to walk toward "where our vehicle was parked." Thereupon, he and Esparza ran toward the parking lot, dropping the two photographs while doing so. Arriving at the truck before anyone from the group and tossing the camera onto the front seat, Uicab started the engine and drove away; one man came within 2 feet of the truck but did not touch it.¹⁹

According to the stipulated testimony of Respondent's field supervisors, Steve Uribe and Guadalupe Diaz, the two drove together in a beige pickup truck to the area near Peck Road and Durfee in El Monte at approximately 1 p.m. on June 13 specifically in order to engage in surveillance of company employees at a union meeting at that location. Testifying at the hearing, Uribe, who was driving, initially averred that they drove there because "we were going to a bar" but subsequently conceded that their purpose was as stipulated. In any event, Uribe admitted that, nearing the intersection of Peck Road and Durfee, he slowed down enough so that he and Diaz could look to see what was happening; Uribe and Diaz each admitted observing a group of six to eight people standing at a corner gas station, and Diaz denied recognizing anyone in the group. According to their stipulated testimonies, they stopped at a red light at the intersection of Peck Road and Durfee, and a man, whom neither recognized, approached the passenger window and asked Diaz for his name. Diaz gave him a false name, and, when the light changed, Uribe drove away. Finally, each man de-

nied driving back and forth in the vicinity of the employee meeting that day.

There is no dispute that, subsequent to the June 13 organizing meetings at approximately noontime on a Monday, alleged discriminatee Miguel Salas had a conversation with his supervisor, Frank Uicab, in the city of Covina at the intersection of Front and Larkin Streets. According to the alleged discriminatee, who signed an authorization card for the Union at the Peck Road meeting with representatives of the Union, Uicab, who normally would oversee Salas' route by driving by and asking if there were any problems, approached him and first inquired, "How are you, Miguel," and then asked, "What do you know about the Union?" Salas responded that he knew "nothing," but Uicab answered that he thought Salas was "one of the leaders of the Union." Salas denied it, saying that he did not need it and that he was fine the way he was. Thereupon, Uicab warned, "Well, everyone who's mixed up in the Union is going to get fired." The supervisor then turned to leave, stopped, said, "We do not need a Union. We have good bonuses, good salary, and good benefits," and then left. Uicab, who believed their conversation occurred before he left for vacation on June 23, denied Rodriguez' version and testified that the conversation was brief with Salas asking "if I new [sic] anything about the Union" and him replying that he "knew nothing about it."

Turning to the discharges of the four alleged discriminatees, Trinidad Rodriguez, who stated that, from February through May, he attended three union organizing meetings, conducted by Harvey Lomeli of Teamsters Local 495,²⁰ and that he signed authorization cards for both Local 495 and the Union, testified that he was discharged by Respondent on June 12, the day before the scheduled meetings between Respondent's employees and representatives of the Union and Local 495. That afternoon, Rodriguez, who drove a pickup truck for Respondent, returned to the truck depot facility at approximately 2 p.m. and was told to report to Tony Rodriguez' office. According to the alleged discriminatee, Field Supervisor Steve Uribe was waiting for him, gave Rodriguez his final check, and said, "there's no more work." Rodriguez asked why he was being terminated, and Uribe replied "he was going to give the reason to the person who was going to represent me." As to the rationale underlying the alleged discriminatee's discharge, Rodriguez' termination report, Respondent's Exhibit 6, states that such was based on "the current accident trend of this individual . . . along with a written reprimand . . . for carelessness. . . . Termination was based on accidents." In this regard, there is no dispute that Rodriguez was involved in two accidents in May 1992. According to him, the first accident occurred in a supermarket parking lot in which he had parked his truck in order to have lunch and, driving his truck out of the parking lot, he collided with a station wagon, driven by an elderly man, causing substantial damage to the area above the rear bumper of the station wagon. Rodriguez testified that, when the vehicles collided, his truck was moving forward and the station wagon was backing up; that "I think

¹⁷ Uicab specifically denied having a video camera with him that day. With regard to the Polaroid camera, Uicab stated that it was the type which requires use of two hands in order to take a picture and that it was not equipped with a telephoto lens.

¹⁸ Uicab opined that the group could have been a gathering of soccer players; he nevertheless took photographs "because I knew there was something going on with the union gathering."

¹⁹ Pedro Esparza, a "spare driver" for Respondent, essentially corroborated Uicab's version of the latter's activities at North Park on June 13.

²⁰ In his pretrial affidavits, Rodriguez failed to mention attending any union organizing meetings prior to May 1992 and stated that none of Respondent's supervisors were present at any of the three organizing meetings, which he attended.

he hit me"; and that the driver asserted "it was my fault because I hit him from the behind." Steve Uribe drove to the scene of the accident and listened the alleged discriminatee's and the station wagon driver's versions of what occurred. According to Rodriguez, he explained to Uribe that, as described above, the station wagon driver was backing up and collided with his pickup truck, but Uribe did not believe him. Contradicting Rodriguez, Uribe testified that the former admitted he was at fault "because he didn't step on the brake right on time" and that, as a result, he issued a written warning notice to Rodriguez. On said document, Respondent's Exhibit 4, Uribe wrote that he informed Rodriguez it would be his "last chance" and that "[Rodriguez] said he will be more careful next time," and, during cross-examination, Rodriguez admitted telling Uribe he would be more careful and being told, by Uribe, such was his "last chance."

As to the second accident, Rodriguez testified that, 2 weeks later, while at a dump site waiting to deposit a load of trash, he accidentally placed his pickup truck into reverse, pressed down on the gas pedal, and collided with the truck, which had been waiting behind his, severely damaging the latter vehicle's front bumper, and that the damaged vehicle happened to be another of Respondent's pickup trucks. According to Rodriguez, Frank Uicab drove out to the dumpsite to investigate the accident, and he (Rodriguez) did not speak to Steve Uribe about this accident until a week later. On that occasion, Uribe approached Rodriguez at a dumpsite and said that "the bumper could be fixed at the shop" but "if I wanted my job, for me to give him 100 bucks, and he would not report it to the Company." Rodriguez testified further that he told Uribe he would pay the money, but, during cross-examination, admitted that he never did so and never mentioned the bribe demand during his discharge conversation as "I saw [Uribe] was a little bit bothered." Contrary to Rodriguez, Uribe testified that he was the field supervisor who investigated the dumpsite accident and that he spoke to Rodriguez, who admitted that the accident was his fault as he did not see the pickup truck behind him. Uribe further testified that he immediately informed the alleged discriminatee that he would report the accident to the operations manager and, given his poor driving record, Rodriguez would possibly be terminated. Uribe specifically denied soliciting the asserted bribe from Rodriguez. According to Uribe, the decision to recommend the termination of Rodriguez was jointly reached, on June 12, by himself, Tony Rodriguez, and Dave Harpov, Respondent's safety coordinator, based on the alleged discriminatee's two May accidents and numerous prior work warnings,²¹ and the alleged discriminatee's union sym-

pathies or activities were not a factor in the decision. Dennis Chiappetta²² testified that he was given the foregoing recommendation on June 12, "and I concurred that he should be terminated." Thereupon, according to Uribe, he met with Trinidad Rodriguez in the supervisor's room, showed him his termination report, and said his termination was based on having "too many incidents which was accidents and damages." To this, Rodriguez replied, "Do you have any balls to tell me the truth," and Uribe denied that the alleged discriminatee asked him the reason for his discharge.

Jesus Ramirez, who was a garbage truckdriver for Respondent and who testified that he executed an authorization card for the Union at the afternoon June 13 meeting, which began on Peck Road in El Monte, was terminated 4 days later on June 17. On that day, according to Ramirez, he finished his route²³ and returned to Respondent's truck depot at approximately 4:30 p.m. Uribe approached and said he wanted to speak to both Ramirez and his helper. Thereupon, they walked to Tony Rodriguez' office, and Uribe began speaking, asking, "What's happening, Jesus?" Ramirez replied that "nothing" was happening, and Uribe said, "Tony told me to fire you because there is no more work." Ramirez asked why, and Uribe said he did not know, "ask Tony." Thereafter, Ramirez went looking for Tony Rodriguez, the operations manager, but was unable to find him and to learn the reason for his termination. Respondent's Exhibit 9 is Ramirez' termination report, with the stated reason for Ramirez' termination being as follows: "Almost lost a big account because driver had not been placing trash bins in their proper place and lids not being kept closed, Driver had been warned back in May. Also had been picking up approx. 45 to 50 stops that were not on backyard service but were curb service stops, Cost a great deal of money to the company by [picking up] stops that were not paying for the service." As to the latter problem, the record establishes that residential route pickups are routinely canceled due to death or are the subject of stop service notices resulting from failures to pay the monthly service fees; that drivers are given written notices of the foregoing and are required to remove applicable service address cards from their route books; that, conversely, when a homeowner pays his debt, a new route card is issued and the driver, on the applicable route, is required to reinsert it in his route book; and that Respondent's route supervisors regularly check the routes of the drivers, whom they supervise, to ensure, among other things, they are giving effect to the cancellation or stop service orders that, accord Steve Uribe testified that, in or about May 1992, he was rou-

²¹ Trinidad Rodriguez admitted having received no less than 10 work reprimands in 1991, with each containing a warning of possible future termination. One such reprimand involved an incident in which, while driving his route, Rodriguez slowly followed a woman, who was walking to work. While the alleged discriminatee maintained that he denied engaging in such misconduct, Steve Uribe testified that the former denied whistling at the woman but admitted following her. Rodriguez received another warning notice in 1992 for mixing recyclable materials and trash during a residential route. Once again, the alleged discriminatee stated that he denied the allegation to Uribe, but the latter maintained that Rodriguez admitted the conduct and offered the excuse that there had been no more room for recyclable material. It must be pointed out that these work warnings are not mentioned in Rodriguez' termination report.

²² Denying any knowledge of a videotape of the June 13 North Park union organizing meeting, Chiappetta testified that he initially learned of Respondent's employees' union organizing activities on Monday, June 15, when Tony Rodriguez informed him of the Saturday organizing meetings and of the supervisors' surveillance of them. According to Chiappetta, he informed Rodriguez "how unhappy I was" at the supervisors' conduct and immediately telephoned Respondent's attorney, who visited Respondent's office 2 days later and gave Chiappetta and Respondent's field supervisors copies of a detailed list, setting forth what management could and could not do during a union organizing campaign.

²³ Ramirez testified that he performed both commercial and residential routes, with Frank Uicab supervising his commercial routes and Steve Uribe supervising his residential routes.

tinely monitoring one of Jesus Ramirez' residential routes²⁴ and observed that the alleged discriminatee was collecting trash from addresses which had been the subject of stop service notices. Thereafter, according to Uribe, Tony Rodriguez directed Respondent's route auditor to follow Ramirez in order to determine the extent of Ramirez' failure to adhere to company practice,²⁵ and the auditor subsequently reported that the alleged discriminatee had been servicing, at least, 30 stop-service addresses. However, there is no record evidence that Ramirez was ever disciplined over this matter, and exactly what Respondent perceived as his indiscretion is not entirely clear. Thus, one may infer from Steve Uribe's testimony (after the auditor reported his findings, the field supervisor spoke to Tony Rodriguez, who said what Ramirez had done "was no good," and the two decided to terminate Ramirez "for not paying attention to his route) that Respondent's main concern was with Ramirez' collection of trash from the numerous stop service addresses. In contrast, Dennis Chiappetta's concern over the auditor's report seems to have been with Ramirez' "sloppy paperwork," a subject about which he had been previously warned—"it was discussed that [Ramirez] continually had disorganized paperwork and that it was pointed out to him previously."²⁶ That the latter appears to have been Respondent's concern is evident from the testimony of Ramirez, who stated that, approximately 2 months before his discharge, Tony Rodriguez met with him and asked why he retained address cards, about which there had been stop service orders, in his route book, and he explained to Rodriguez that the normal situation was that stop service orders lasted no longer than a week or, at most, a month and, rather than remove the address card from his route book, "I'd have the cards already for when they gave me the order." According to Ramirez, the conversation ended with Rodriguez saying that the alleged discriminatee's route book contained "too many papers" and instructing him to clean it out. Such was done the next day. Nothing more was said on the subject, and Ramirez denied ever picking up trash from addresses, which were the subject of cancellation notices, and ever being accused by Rodriguez of picking up trash from 30 to 40 canceled accounts.²⁷

²⁴ According to Uribe, Ramirez' route entailed mostly "backyard services," meaning that the driver or helper must push a large bin, equipped with wheels, to the back of a home in order to collect the homeowner's garbage.

²⁵ Dennis Chiappetta explained that the picking up of bad accounts is costly to Respondent "because we continue to have all of the labor costs, the landfill costs, the administrative costs of picking up that account, and yet we get no revenue for [it]."

²⁶ Asked, during cross-examination, whether Ramirez exhibited paperwork organization problems from the day he was hired, Chiappetta replied "could be," and admitted that, in his pretrial affidavit, he said Ramirez' paperwork problem had been discussed on a "daily basis" since his hire. Finally, after denying that, until his termination, Ramirez had never been disciplined for his continuing paperwork problem, Chiappetta was again confronted with his affidavit wherein he said that, until his discharge, Ramirez had never been disciplined for paperwork problems.

²⁷ Steve Uribe, who admitted that weekly service for a customer may be stopped 1 week and resumed the next, contradicted Ramirez, stating that the latter's only explanation for what occurred was that he never followed the route book and "he was just picking them up normally like every week."

With regard to the matter of the averted loss of a large account, caused by Ramirez' alleged failure to close trash bin lids and place the bins in their proper location, the record establishes that, on May 11, Respondent received a complaint, by telephone, from the manager of Spyglass Villas, a condominium complex located in the city of Whittier, that, after collecting the trash that day, Respondent's truckdriver and helper had failed to close the lids on the trash bins and return the bins to the trash room.²⁸ Frank Uicab testified that, as is the normal practice with a customer complaint,²⁹ he immediately drove to the Spyglass Villas and observed that the complex's trash bin lids had been left open and "trash was all over, scattered all over the place." Thereupon, Uicab cleaned the mess, spoke to the manager, who was upset, and convinced her not to cancel Respondent's service, saying the incident would not be repeated. Uicab testified further that, the next day, he informed Tony Rodriguez about what had occurred and, upon ascertaining that the driver of the truck was Jesus Ramirez, spoke to the alleged discriminatee and his helper, explaining that he had personally observed the scene and that he had to clean the area by himself. Then, according to Uicab, he told Ramirez that such "is poor service. We can not have this. This is a very large account," which Respondent "cannot afford to lose." After Ramirez admitted it "probably" happened and would not again, Uicab warned the alleged discriminatee "if this happens again, you're gone." Notwithstanding Uicab's warning to Ramirez, slightly over 3 weeks later, on June 5, Respondent received a letter from the Spyglass Villas management service, stating, in part, "that the lids on the trash containers are not being returned to a covered position after the dumpster is emptied, and in many instances the trash container is not fully replaced into the trash enclosure which creates difficulties for persons to access the trash containers." The letter continued, requesting that Respondent remedy the situation by ensuring that the trash bin lids are closed and that the bins are again placed in the trash enclosure. Uicab testified that, on reading the letter, he again visited the Spyglass Villas, and "I looked at the enclosures, and sure enough, the lids were open, the trash on the ground . . . flies everywhere."³⁰ Thereupon, he again spoke to the manager and placated her by promising to replace the driver and assuring her such would never happen again. According to Uicab, he subsequently reported to Rodriguez on his findings and conversation with the Spyglass Villas' manager and learned that Respondent's sales manager also had spoken to the management company and convinced it to retain Respondent as Spyglass Villas' trash removal service. Uicab testified that, based upon the foregoing, he made the recommendation, to Rodriguez, at the next safety meeting that Ramirez should be removed from his supervisory area and terminated.³¹ The recommendation

²⁸ The complaint form, R. Exh. 7, notes that the manager was "upset."

²⁹ Uicab testified that the manager also complained that trash was left "all over the place, inside and outside the trash enclosures." However, R. Exh. 7, the complaint form, contains no such complaint.

³⁰ There is nothing in the June 5 letter regarding trash being left on the ground or a threat to terminate Respondent's trash removal contract.

³¹ Ramirez testified that, approximately a month before his discharge, on returning to the yard from his route, he met with Frank

to terminate Ramirez went to Chiappetta, who was informed that Uicab and the sales manager had assured the manager that the driver, who was responsible for the problem, would likely be terminated and had been required to “basically [resell] our service” and who testified that the potential loss of an account or “an event where one of our drivers has angered . . . customers, we consider that grounds for termination.” Therefore, he approved the recommendation to discharge Ramirez. Steve Uribe corroborated Ramirez that he informed the latter of the discharge but denied starting the conversation with “what’s happening.” According to Uribe, he informed Ramirez that the reason for his discharge “was picking up accounts that were on stop service” and his problem with Uicab regarding not closing the garbage bin lids. Finally, with regard to the discharge of Ramirez, Dennis Chiappetta stated that, absent the Spyglass Villas matter, the alleged discriminatee would not have been terminated. In contrast, Steve Uribe averred that the precipitating reason for Ramirez’ discharge was his picking up of canceled accounts and, asked if Ramirez would have been discharged if such had not occurred, Uribe replied, “maybe not.”

The third alleged discriminatee, Jesus Rosas, who, in addition to attending the two June 13 meetings with the Union, signed an authorization card for the Union prior to his termination, was employed as a welder in Respondent’s maintenance shop and, according to his termination report, was discharged by Respondent on July 21 for “insubordination” resulting from approaching his Supervisor Dal Hile “in a threatening manner” and “swearing” at the supervisor and about Respondent. There is no dispute that, if Rosas was insubordinate to Hile, such occurred during a confrontation between the two, in English, on Friday, July 10, concerning the pay, which Rosas received for the Fourth of July holiday.³² What is in dispute is exactly what Rosas said during this meeting. According to Hile, at approximately 12:45 p.m. on that Friday, he was walking through the shop when one of the employees pointed to Rosas and asked that Hile find what was his problem. Hile approached Rosas, “and Jesus said he was very unhappy about his holiday pay.” Hile asked him what the problem with his pay was, “and he said that we were stealing from him.” Hile asked him to explain,

Uicab, who “said that there were some problems in an apartment because we were leaving the cans without lids. The reason that I told him we left them uncovered is because the people will put the garbage on top of them and the box was empty. Then Uicab told me continue leaving them closed because if I see that same problem continued, to let him know so he could speak with the clients.” During cross-examination, Ramirez denied being told it was a major problem and denied telling Uicab that he closed the trash lids on all occasions. Further, Ramirez denied being told by Uicab that the client had threatened to cancel the account or that Respondent could not afford to lose the account.

³² According to Rosas, while he ordinarily did not work on Saturdays, in order to be paid for July 4 in 1992, his supervisors required him to work that Saturday, and he, in fact, did work 4 hours. Rosas’ complaint on the following Friday, payday, was that his wages were “incomplete” as he should have been paid as if he had worked 8 hours on July 4. He added that he is certain that he worked that day. Dal Hile disputed Rosas as to whether the latter worked on Saturday, July 4, stating that he reviewed Respondent’s payroll records, which show that Rosas did not work on that day. He added that all employees, who did not work on July 4, received 4 hours’ “straight time” for the day.

“and [Rosas] proceeded to tell me that he was unhappy about his pay, and I explained to him that everybody got the same thing, that he wasn’t picked on . . . and he got very mad about it and said I was a fucking dog and that the Company was nothing but a fucking dog and that the owners were a fucking dog . . .” At that point, Hile interrupted Rosas, saying that Rosas wasn’t being forced to work for Respondent and could always quit. To this, Rosas said, no, and added “‘I’d rather have you fire me. Then I can get workman’s compensation.’ And I just walked away from him.”³³ Hile testified further that no less than six employees were in the vicinity and could have overheard Rosas’ outburst and that, at least, four of them speak English. Contrary to his supervisor, Rosas, who stated that three other employees were within 8 feet of Hile and him and that none “understand much English,” testified that the conversation began with him showing his paycheck to Hile, saying it was incomplete, and asking why—“Are they stealing or something.” Answering in what Rosas described as “a harsh manner,” Hile said “no” and “everybody got the same.” Hile then asked, “So how come you are complaining?” Rosas responded, “My holiday is not complete, and I should not have to work on Saturdays.” The conversation ended with Hile saying he could decide and “If you want to, there is the door. You can leave,” and him replying that he needed the job. Nothing more was said and, while admitting being angry at Hile’s comments, Rosas specifically denied ever cursing at Hile during the conversation or threatening to file a worker’s compensation claim. During cross-examination, Rosas maintained that his accusation about stealing was said “discreetly” and that he does not know how to utter curse words in English.

Dal Hile further testified that he mentioned the confrontation with Rosas to the other maintenance shop supervisor, Al Arzola, and that they decided to raise the matter of Rosas’ behavior at the next monthly meeting when shop problems were discussed. Such a meeting occurred on July 21 and, according to Hile, “I repeated exactly what happened.” When he concluded, Dennis Chiappetta, who was at the meeting, instructed him to terminate Rosas. According to Chiappetta’s rather colorful account of Hile’s purported description of his confrontation with Rosas—“Mr. Hile confronted Mr. Rosas, and he immediately jumped in a very threatening manner in his face. He said, ‘Look, I got a problem with the way I was paid for a holiday,’ and ‘You people are a bunch of fucking dogs. Your company’s a fucking dog. You’re a fucking dog, and I don’t have to take this stuff.’” Hile asked what was his problem and, “in a very threatening manner,” Rosas said he should have been paid for a holiday but wasn’t. Hile told the alleged discriminatee that he had been properly paid and that “we weren’t holding a gun to his head; he didn’t have to work there if he didn’t want to.” At point, Rosas threatened to file a worker’s compensation claim if Respondent fired him. Chiappetta confirmed that, on hearing what Rosas said, he instructed Hile to terminate the alleged discriminatee that afternoon. Accordingly, Hile met with Rosas later that

³³ During cross-examination, Hile stated that, while profanity is regularly used by employees in the shop, he never had heard Rosas use profane language. He added that what concerned him was Rosas’ cursing being directed at him and uttered in the presence of other employees.

day. As to what was said, Rosas recalled that Hile told him "he had spoken with the owner [about] . . . my problem, that [the owner] had decided to let me go." Rosas responded that he needed a job and asked why he was being fired, and Hile merely replied that Rosas "was not a good [employee] for the Company." Contradicting Rosas, Hile recalled informing the former that he was being terminated "for insubordination" and "he was no longer needed in the shop."³⁴

The final alleged discriminatee, Miguel Salas, who was a driver for Respondent and who, besides attending the June 13 Peck Road meeting, signed an authorization card for the Union on July 16, was discharged on August 4. While, according to Salas' termination report, Respondent discharged him based on a July 28 customer complaint, no less than 153, 1992 overweight load citations, a "careless" accident on July 3, and his "poor attitude towards customers and fellow workers," Dennis Chiappetta testified that the precipitating reason for the termination of Salas was the July 28, service complaint and that, while the other items listed were factors,³⁵ "[Salas] would not have been terminated if [the service complaint] never would have occurred."³⁶ With regard to the July 28 incident, according to Chiappetta, an "irate" customer, named Gonzalez, telephoned Respondent's office with a complaint that one of Respondent's drivers had thrown garbage cans all over the street and had a bad attitude. Apparently, it was determined that Miguel Salas was the driver of the truck, and his Supervisor Uicab was assigned to investigate the complaint. According to Uicab, the complaining individual was a residential homeowner, and he (Uicab) initially spoke by telephone to the individual and then visited the residence, observing garbage cans thrown on to the front lawn and in the street and newspapers and plastic bags, filled with garbage, scattered around. He spoke again to the "unhappy" customer, who said he had been outside when the garbage was collected and had witnessed Salas leave the resulting mess. The customer screamed about the "sloppy" quality of Respondent's service and threatened to stop utilizing Respondent and to urge his neighbors to do likewise. Uicab apparently was able to appease the customer and to convince him to remain a customer of Respondent by promising, among other things, to discipline or terminate the driver. Although uncorroborated by Uicab, Chiappetta testified that, after investigating, Uicab reported to him that, in

addition to the July 28 incident, there had been four previous confrontations between the customer and Salas and that some of these had been "face-to-face" during which "swear words" were uttered.³⁷ Thereafter, according to Chiappetta, he met with Uicab, Tony Rodriguez, and Terry Schneider regarding Salas' "overall performance," and the four reached the conclusion that, given his throwing garbage cans on this occasion and, on an earlier occasion, "throwing some piece of furniture," there seemed to be a "trend" or "consistency" to his actions. Believing that these actions indicated "careless work" and in light of a significant number of load overweight citations and other customer complaints, the recommendation of the others was to terminate Salas, and Chiappetta concurred. Thereafter, Uicab met with Salas and, according to the latter, said that Salas was being fired. The alleged discriminatee asked why, and Uicab said, "You have too many complaints from the people. You have too many [overweight tickets]" As to his recollection of their conversation, Uicab testified that "I told him about the seriousness of the complaint and what that customer had told us, that he didn't want to see [Salas] on that route And that it was a very serious complaint." Then, Uicab accused Salas of lying to him and said "we couldn't deal with it. Plus the accident that he had and the overweights."

Asked if Respondent had terminated any employees in 1991 and 1992 for conduct, similar to that for which the alleged discriminatees were assertedly terminated, Dennis Chiappetta testified that 18 employees were terminated in 1991 and 27 employees were terminated in 1992 "for a variety of reasons, including complaints, overweights, insubordination" Respondent's Exhibit 15 is a compilation of Respondent's discharge records and corroborates Chiappetta, except to the extent that the 27, 1992 discharges include the alleged discriminatees, that employees have been terminated for the above-stated conduct. However, said exhibit also discloses disparate usage of the discharge penalty. Thus, while some individuals have been terminated after one accident or two or three within a short period of time, driver Miguel Ameruiz was not terminated until February 1992—after he had been involved in no less than five at-fault accidents during the preceding 12 months, and driver Antonio Robles was not terminated until June 1992—after being involved in four at-fault accidents within the preceding 10 months. Moreover, it is also true that Respondent does not consistently terminate employees for the above conduct and, in fact, in some instances, tolerates such to the point of awarding raises to miscreants. Thus, during cross-examination, when confronted with the employment records of several employees, Chiappetta confirmed that driver David Gonzalez was given a \$1-an-hour wage increase in December 1992, despite being involved in at-fault accidents in June, July, and September; that driver Felix Silver was involved in an at-fault accident in July 1992 and, while driving his route on January 26, 1993, struck and killed a pedestrian but was not terminated;³⁸ that, in November 1992, driver Ronald Santallan was not terminated despite being given a written reprimand

³⁴ The supervisor admitted that Rosas uttered no curse words during the discharge conversation.

³⁵ There is no dispute that, on or about July 3 Salas was involved in an accident in the city of Covina, resulting in damage to a passing vehicle. According to Salas, "We're making a pick-up at a stop. There was a furniture made out of metal, like a little table. . . . So then I threw it, and the thing . . . fell over, and it went into the street. . . . [A] car came by fast and scratched against the furniture." Salas added that he threw the metal furniture piece toward his truck's garbage bin, but "it bounced. It went in, but it bounced out towards the street." According to Respondent's accident report, Respondent's Exh. 13, the damage, caused by Salas to the passing vehicle, was in excess of \$567. Also, Respondent's "bonus summary" record for Salas shows that he had received no less than 152 overweight load citations and had been the subject of 12 customer complaints during the first 6 months of 1992. Salas denied having so many overweight citations and did not believe there had been 12 customer complaints in 1992.

³⁶ Chiappetta maintained that a "significant customer service complaint" could be grounds for termination.

³⁷ Salas had no recollection of this incident or of four previous confrontations with the same individual.

³⁸ Chiappetta asserted that Respondent's insurance carrier advised against terminating Silva until litigation over the matter was resolved.

after a customer complained about his use of abusive language and, the next day, being involved in an at fault accident;³⁹ that driver Martin Solano was not terminated after colliding with a vehicle while parking his truck; that driver Jesus Valdez was given a raise in 1992 despite being given a written reprimand and a suspension for consistently receiving overweight load citations; that driver Mario Morales was not discharged despite a complaint, from an upset customer, that he had backed his truck into the customer's garage door, causing extensive damage and, subsequently, being reprimanded for failing to report the accident; that driver Jose Torres was not terminated after an at-fault accident in which he negligently backed into a water pipe, resulting in internal damage to a building; and that driver Manuel Montiel was given a 50-cent-an-hour raise despite receiving two or three complaints a month for failing to collect garbage from some bins.

B. Legal Analysis

The consolidated complaint alleges and counsel for the General Counsel argues that, subsequent to becoming aware that its employees had embarked on a union organizing campaign, Respondent engaged in surveillance of the initial meetings with representatives of the Union, engaged in acts designed to coerce and restrain employees from continuing to support the Union, and discharged four known or suspected union adherents—acts and conduct specifically denied by Respondent. At the outset, I consider the acts and conduct, violative of Section 8(a)(1) of the Act, allegedly engaged in by Respondent's supervisors. Initially, with regard to the employee meetings, conducted by the Union, on June 13, at North Park and on Peck Road, the record evidence establishes that Respondent's employees were present amongst the gathered employees at both meetings, and Respondent admits that Tony Rodriguez and Frank Uicab were each at North Park with the intent to discover which of Respondent's employees attended the scheduled meeting and to observe the events at the location and that Steve Uribe and Guadalupe Diaz drove slowly past the gathering on Peck Road in order to discover whether Respondent's employees were present and to observe what occurred. The only issue of fact, concerning these admitted acts of unlawful surveillance, pertains to the surveillance, in which Frank Uicab and "spare driver" Pedro Esparza engaged⁴⁰ and, in particular, exactly where they were situated in the park (seated in the baseball field bleachers or standing in the midst of a row of trees) the type

of camera (a Polaroid camera or a video recording camera) with which Uicab photographed the employees' organizing meeting with representatives of the Union. As to this, while the witnesses, proffered by the General Counsel, were contradictory regarding what occurred as the employees, who were chasing after Uicab and Esparza, reached the latter's red pickup truck in the North Park parking lot, there is virtual unanimity as to what precipitated the group's actions. In this regard, I was particularly impressed by West Covina employee Ruben Real, whose testimonial demeanor was that of an honest and straightforward witness, one who clearly was truthfully recounting events to the best of his recollection. Crediting Real's testimony, I find that, arriving late for the meeting, he immediately observed two persons, standing beneath a tree approximately 100 feet from the group of employees, with one pointing what appeared to be a video recording camera⁴¹ directly at the group. Suddenly, the group began running toward the two men, one of whom was later identified as one of Respondent's foremen, and, simultaneously, the two men began running toward the parking lot. Given what I perceive as Real's veracity, I likewise credit the corroborative testimony of Union Official Raul Lopez and West Covina employees Mario Rubio, Jose Arreola, Martin Santiago, Jesus Arreola, and Efrain Carrillo, noting that, as did Real, each candidly testified that what precipitated the undisputed pursuit of Uicab and Esparza was the group's sighting of two men, standing beneath some trees, approximately 100 to 150 feet from the site of the organizing meeting, and photographing those at the meeting with a video camera.⁴² Providing support for this view, I believe, is the rather inexplicable version of events as described by Frank Uicab and his corroborating witness, Pedro Esparza. In this regard, not only did I perceive Uicab's testimonial demeanor as that of a inherently disingenuous witness but also I can not understand why, notwithstanding having driven past the group of 30 to 40 individuals and assertedly failing to recognize anyone and, presumably, being unknown to any member of that group, Uicab and Esparza believed it necessary to conceal themselves among the spectators in the baseball field bleachers, situated as much as 400 feet from the meeting site, in order to engage in further surveillance of individuals, with whom they assertedly were unacquainted. Also, if, in fact, Uicab was unable to recognize any of Respondent's employees, why, utilizing a Polaroid camera without a telephoto lens, did he feel compelled to take two photographs of the meeting from where he and Esparza were seated rather than moving closer in order to obtain a more focused picture. Moreover, if, as asserted, Uicab and Esparza were seated among several spectators in the baseball bleachers 400 feet from the meeting site, it seems highly unlikely that any of the group would have been able to recognize either of them and, therefore, it is difficult

³⁹ Chiappetta explained that his driving entailed backing into areas, causing accidents to occur more frequently.

⁴⁰ Some of the former West Covina employees asserted that Tony Rodriguez' surveillance of the North Park meeting included taking photographs. However, other witnesses directly contradicted this testimony, and Rodriguez himself denied said conduct. In these circumstances, I must conclude that there exists insufficient record evidence on which to make a finding that Rodriguez did, in fact, photograph the meeting.

As to the Peck Road surveillance, I credit the frank testimony of Jesus Ramirez, who appeared to have been far more candid than either Steve Uribe or Guadalupe Diaz, that the pickup truck, in which Uribe and Diaz were riding, slowly drove past the employees gathering at the gas station two times. Further, as Ramirez was crossing the street as the supervisors drove past, it is hard to believe that they did not recognize him.

⁴¹ Real credibly clarified any confusion caused by his pretrial affidavit, explaining that his reference to not knowing the type of camera meant the brand and not to its identity as a video camera.

⁴² I am confident that the camera, which they observed, was, in fact, a video recording camera. Thus, as described by Mario Rubio, Martin Santiago, Jesus Arreola, and Efrain Carrillo, the photographer rested the camera on his shoulder while pointing it at the group and recording what he observed. Such, of course, is the position in which one uses an older-model video camera and not the position for taking pictures with, for example, a Polaroid camera.

to understand why, when members of the group began running toward the parking lot, Uicab and Esparza panicked and ran to their truck. Accordingly, I find wholly incredible Uicab's version of his June 13, surveillance,⁴³ and what seems more logical and likely is that, contrary to his assertions, as he drove by them, Uicab did, in fact, recognize Respondent's employees among the group at North Park; that, inside the park and in order to engage in surveillance and to photograph the meeting, Uicab and Esparza came as close as possible to the group, standing in a row of trees; that they were observed and recognized by the group, some of whom began running toward where Uicab and Esparza were standing; and that, realizing that they had been spotted, Uicab and Esparza began running toward their red pickup truck. Further, of course, contrary to their express denials, I believe that Uicab used a video camera to photograph the employee gathering.

Based on the parties' stipulations and the credited testimony, the record conclusively establishes that, on June 12, Respondent's supervisors conspired to engage in surveillance of their employees' scheduled union organizing meetings and that, on June 13, Respondent's supervisors, Antonio Rodriguez, Steve Uribe, Frank Uicab, and Guadalupe Diaz did, in fact, engage in surveillance, including one instance of videotaping, of the organizing meetings for the Union, attended by Respondent's employees. There can be no question that an employer engages in conduct violative of Section 8(a)(1) of the Act, by engaging in surveillance of union organizing meetings, attended by its employees. *Action Auto Store*, 298 NLRB 875, 887 (1990). Moreover, photographing employees while they are engaged in activities protected by the Act is deemed to be surveillance, violative of Section 8(a)(1), absent some "legitimate justification." *John Ascuaga's Nugget & Hotel*, 298 NLRB 524, 554 (1990); *United States Steel Corp.*, 255 NLRB 1338, 1338-1339 (1981). Respondent has presented no evidence justifying the foregoing conduct. Accordingly, I find that Respondent's admitted surveillance of its employees' meetings with union representatives on June 13 constitutes conduct violative of Section 8(a)(1) of the Act.

I believe that, in addition to the above-described unlawful surveillance, Respondent engaged in additional conduct violative of Section 8(a)(1) of the Act. Thus, crediting Miguel Salas, who appeared to be testifying in an honest and straightforward manner, over Frank Uicab, who, as stated above, did not appear to be testifying candidly and, as will be discussed infra, appeared to lack any compunctions against embellishing his testimony, I find that, within weeks of the June 13 surveillance, while Salas was working his route, Uicab approached him and, after greeting the alleged discriminatee, asked "What do you know about the Union?" Then, after Salas denied any knowledge of a union, Uicab said that he thought Salas was "one of the leaders of the Union." Finally, after the latter denied the accusation and replied that he was happy with his present circumstances, Uicab warned that "everyone who's mixed up in the Union is going to get fired." As to the interrogation, utilizing the surrounding circumstances test and the criteria set forth in *Rossmore House*, 269 NLRB 1176, 1178 at fn. 20 (1984),

there is no record evidence that Salas was an open and avowed supporter of the Union and, as will be discussed, Uicab's question was posed in the context of other unlawful comments and conduct. In these circumstances, I find that Uicab's interrogation of Salas constituted conduct violative of Section 8(a)(1) of the Act. Further, Uicab's comment that he thought Salas was one of the leaders of the Union clearly was the type of comment, the effect of which is to create the impression, in the mind of an employee, that his employer had been engaged in surveillance of its employees' union organizing activities and, therefore, said comment was violative of Section 8(a)(1) of the Act. *Escada (USA), Inc.*, 304 NLRB 845, 849 (1991); *Livingston Pipe & Tube*, 303 NLRB 873 (1991). Finally, of course, Uicab's warning that, any employees who were "mixed up" with the Union's organizing campaign would be fired, was blatantly violative of Section 8(a)(1) of the Act. *Gold Bond Building Products*, 293 NLRB 1138, 1139 (1989); *Norco Products*, 288 NLRB 1416, 1420 (1988).⁴⁴

I turn now to consideration of the allegations that Respondent discharged employees Trinidad Rodriguez, Jesus Ramirez, Jesus Rosas, and Miguel Salas because of their activities in support of the Union and, therefore, in violation of Section 8(a)(1) and (3) of the Act and note that my determination of the legality of the discharges is governed by the traditional precepts of Board law in alleged union animus discharge cases, as modified by the Board's decision in *Wright Line*, 251 NLRB 1083 (1990), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 453 U.S. 989 (1982), approved in *Transportation Management Corp.*, 462 U.S. 393 (1983). Thus, in order to prove a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel has the burden of establishing that the alleged discriminatees engaged in union activities; that Respondent had knowledge of such conduct; that Respondent's actions were motivated by union animus; and that the discharges and layoffs had the effect of encouraging or discouraging membership in the Union. *WMRU-TV*, 253 NLRB 697, 703 (1980). Further, the General Counsel has the burden of proving the foregoing matters by a preponderance of the evidence. *Hampshire Woolen Co.*, 141 NLRB 201, 209 (1963). However, while the above analysis is easily applied in cases in which a respondent's motivation is straightforward, conceptual problems arise in cases in which the record evidence discloses the presence of both a lawful and an unlawful cause for the allegedly unlawful conduct. In order to resolve this ambiguity, in *Wright Line*, supra, the Board established a causation test in all 8(a)(1) and (3) cases involving employer motivation. "First, we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." Id. at 1089. Two points are relevant to the foregoing analytical approach. First, in concluding that the General Counsel has established a prima facie showing of unlawful animus, the Board will not "quantitatively analyze the effect of the unlawful motive.

⁴³ In these circumstances, I do not credit the testimony of Esparza, who appeared to be a sycophant and not worthy of belief.

⁴⁴ I believe that Uicab engaged in the above-described unlawful conduct notwithstanding whatever admonishments might have been advised by counsel.

The existence of such is sufficient to make a discharge a violation of the Act.” Id. at 1089 fn. 4. Second, once the burden has shifted to the employer, the crucial inquiry is not whether Respondent could have engaged in the discharges and layoffs here but, rather, whether Respondent would have done so in the absence of the alleged discriminatees’ union activities and support. *Structural Composites Industries*, 304 NLRB 729 (1991); *Filene’s Department Stores*, 299 NLRB 183 (1990).

Analysis of the record, as a whole, convinces me that the General Counsel has made a prima facie showing sufficient to establish that Respondent was unlawfully motivated in discharging at least three of the alleged discriminatees—Jesus Ramirez, Jesus Rosas, and Miguel Salas. Initially, in this regard, while the record is silent as to which of Respondent’s employees were the leaders of the union organizing campaign among Respondent’s employees, each of the three alleged discriminatees appears to have been a union adherent and to have signed an authorization card for the Union prior to his termination; Jesus Rosas attended the June 13 morning meeting at North Park in West Covina; and each of the three alleged discriminatees was among the individuals, who gathered with Union Official Lopez on Peck Road in El Monte that Saturday afternoon. Moreover, given the videotape of the North Park meeting, which, I believe, was recorded by Uicab, and the admitted observations of the North Park meeting by Uicab and Rodriguez and of the Peck Road meeting by Uribe and Diaz, the inference is warranted that Respondent was able to identify those of Respondent’s employees, who attended, including Rosas, Ramirez, and Salas. Further, there is record evidence that not only did Respondent’s supervisors conspire to and, in fact, engage in surveillance of the June 13 union organizing meetings but also at least one (Uicab) interrogated an employee, created the impression of surveillance of the employees’ union organizing activities, and, most significantly, on behalf of Respondent, threatened to terminate employees who were “mixed up” with the Union. In the foregoing circumstances, I find that the General Counsel has made a prima facie showing sufficient to support the inference that the discharges of Jesus Ramirez, Jesus Rosas, and Miguel Salas were motivated by their activities and support for the Union.⁴⁵

⁴⁵ I do not believe that the General Counsel has made the requisite prima facie showing with regard to Trinidad Rodriguez. At the outset, it must be noted that Rodriguez was discharged on the Friday before the June 13 organizing meetings with the Union. Further, while asserting that he attended several union organizing meetings beginning in February, said assertion was undermined and contradicted by his pretrial affidavits, in which Rodriguez mentioned attending no organizing meetings earlier than May. In any event, assuming that he did attend some of the early 1992 organizing meetings, conducted by Teamsters Local 495, Rodriguez admitted that none of Respondent’s supervisors were present at said meetings, and there is no record evidence that Respondent was ever aware of them or of the alleged discriminatee’s union sympathies or activities. Moreover, Rodriguez’ testimonial demeanor was that of an utterly unreliable witness, one not worthy of belief. Accordingly, and in light of Rodriguez’ failure to mention such a comment in his pretrial affidavits, I cannot, and do not, credit his assertion that Uicab threatened that Respondent would terminate anyone who joins a union. Nor, in these circumstances, can I credit his testimony that, during his discharge conversation, Steve Uribe assertedly uttered the oblique comment that he would tell the reasons for Rodriguez’ discharge to

In accord with the *Wright Line*, supra, analytical approach, the burden shifted to Respondent to demonstrate that it would have discharged Ramirez, Rosas, and Salas notwithstanding the union activities and sympathies of each individual. Initially, with regard to the discharge of Jesus Rosas, the issue is whether, on the Friday after the Fourth of July holiday, during his confrontation with Shop Supervisor Dal Hile, the alleged discriminatee was insubordinate to such an extent that, in the ordinary course of events, Respondent would have terminated him for his misconduct, and, on this point, it is first necessary to discern what is not in dispute concerning what happened and what was said. As to this, there is no dispute that the confrontation concerned Rosas’ complaint that there was a discrepancy in the amount of pay he received for the Fourth of July holiday; Hile admitted that, acting on suggestions from employees, he initiated the resulting confrontation with Rosas by inquiring about the nature of the latter’s problem; the alleged discriminatee conceded that, at one point, he accused Respondent of “stealing or something” and that he became upset during the confrontation; and there is no dispute that, toward the end of the confrontation, Hile stated that Rosas could quit if he so desired. However, as conceded by Hile, the crux of Rosas’ insubordination, if any, was his asserted cursing—directed toward Hile and Respondent—in the presence of other employees and an asserted threat to file a worker’s compensation claim if terminated. The alleged discriminatee denied either cursing at Hile or threatening to file a worker’s compensation claim during their confrontation, and I find his denials to be credible. Thus, notwithstanding his rather poor recollection of exactly what occurred at the June 13 North Park meeting, in relating his version of what occurred between himself and his supervisor, Rosas impressed me as being a truthful witness, one worthy of reliance. In contrast, the circumstances convince me that both Hile and Chiappetta dissembled as to the Rosas incident. In this regard, I note that, while Rosas’ termination report accused the alleged discriminatee of initiating the confrontation, Hile admitted that he did so. Further, Hile admitted that, while cursing was not uncommon in the repair shop, he had never previously heard Rosas use profanity and, most significantly, that Rosas did not utter any curse words upon being informed that he had been fired.⁴⁶ Moreover, the fact that Respondent failed to offer the testimony of any of the supposed employee witnesses to the incident indicates that Rosas should be credited that none understand much English or specifically what Rosas and Hile said during their confrontation. As to Chiappetta, his version of the confrontation, as supposedly related to him by Hile, was sus-

the person who was going to represent him. Therefore, while I do believe that Respondent harbored unlawful animus toward those employees, who it believed or suspected were supporters of union organization, and while the alleged discriminatee may have engaged in union activities prior to his termination, there is no credible evidence that, at the time of the discharge, Respondent was aware of or suspected his involvement in said activities and, accordingly, I shall recommend dismissal of those portions of the consolidated complaint pertaining to the discharge of Rodriguez.

⁴⁶ Surely, if an individual would freely utter curse words while complaining about a pay problem, he would feel no inhibitions against using such language at the time of termination. Put another way, the fact that Rosas did not use profanity on the latter occasion strongly suggests that he did not do so on the Friday after July 4.

piciously far more vivid than that of the latter particularly regarding Rosas' confronting Hile and jumping in the latter's face "in a very threatening manner." Finally, with regard to Rosas' asserted threat to file a worker's compensation claim if fired, given what I perceived as his testimonial demeanor and awareness, I believe it as likely that Rosas would have known enough to have threatened such a lawsuit if terminated as a neo-Nazi repenting and acknowledging the tragedy of the Holocaust. In the above circumstances, given my belief that Respondent found it necessary to, and did, fabricate the seriousness of the termination incident, I believe that, absent Rosas' activities and sympathies in support of the Union, Respondent would not have discharged him, and, accordingly, I find that the termination of Rosas was violative of Section 8(a)(1) and (3) of the Act.

Turning to the discharge of Jesus Ramirez, I note at the outset that, while Respondent's termination report rationale seemingly assigns equal weight to Ramirez' causing the near loss of the Spyglass Villas account and his providing trash removal services for 45 to 50 customers who had either canceled their accounts or for whom Respondent had issued stop service orders, Respondent's witnesses were contradictory regarding the relative import of each. Thus, while Dennis Chiappetta averred that, absent the Spyglass Villas matter, the alleged discriminatee would not have been terminated, Steve Uribe stated that the precipitating reason for Ramirez' termination was his picking up of canceled accounts and, when asked if Ramirez would have been terminated if such had not occurred, Uribe replied, "maybe not." In any event, close scrutiny of each asserted discharge reason reveals less than asserted by Respondent. As to the matter of Ramirez' picking up of canceled or stop service accounts, I note, initially, that Respondent failed to make clear exactly what it viewed as Ramirez' malfeasance. Thus, the only reasonable inference to be drawn from Uribe's testimony is that Respondent's concern was with the alleged discriminatee's collection of trash from the supposedly numerous stop service or canceled service addresses; however, Chiappetta, who assertedly gave ultimate approval for the discharge, implied that Ramirez' "sloppy paperwork," resulting in his failure to remove, from his route book, the service cards for stop service or canceled service addresses, was the problem. If the latter, indeed, was Ramirez' transgression, given Chiappetta's admission, during his testimony, that, from his hire date, Ramirez had exhibited paperwork problems and Chiappetta's acknowledgment of his pretrial affidavit admission that Ramirez had never been given disciplined for his continued paperwork problems, one may justifiably conclude that, prior to discharging Ramirez, Respondent had condoned the very matter, which formed a basis for his termination. If, on the other hand, Uribe's understanding of Ramirez' indiscretion was what concerned Respondent, despite Uribe's assertion that he and Tony Rodriguez discussed the matter and decided to terminate Ramirez, there is no record evidence that the alleged discriminatee was ever disciplined by Respondent for servicing approximately 40 canceled or stop service addresses. Inasmuch as Uribe and Chiappetta clearly contradicted each other with regard to what Respondent regarded as Ramirez' problem and, noting Uribe's rather crass testimony as to why he was in the vicinity of Peck Road and Durfee in the afternoon of June 13, as I did not perceive Uribe's testimonial demeanor to be that of an honest and credible wit-

ness, I credit Ramirez' denial that he ever actually serviced any canceled or stop service addresses and find that no matter the degree of seriousness of Ramirez' paperwork problems, Respondent condoned these until his termination.⁴⁷

Turning to the Spyglass Villas matter, while clearly, on two occasions, the said customer complained regarding deficient service, I believe that Respondent fabricated the extent and seriousness of the problem. Thus, Respondent's defense depends on the testimony of Frank Uicab, a witness, upon whom, I previously concluded, one may not rely for any degree of candor. Such was never more evident than in the Spyglass Villas matter testimony. Thus, if one were to credit Respondent's field supervisor, one would have to conclude that, as Uicab colorfully described, on numerous occasions, Ramirez and his helper left rotting and decaying garbage lying on the ground all over the trash receptacle area and that, as is the cornerstone of Respondent's defense, Uribe was required to convince the management company not to cancel Respondent's service contract. However, the difficulty with this is that there is no corroboration in the record, where such should exist, for the foregoing. In this regard, I refer to the initial complaint form, which mentions nothing about garbage being left on the ground, and to the Spyglass Villas management company's June 5 complaint letter, which recited two very specific complaints: the failure to close the trash bin lids and the failure to place the empty bins in the trash receptacle area. Such a health and safety risk as decaying garbage left on the ground surely would have been a matter of utmost concern to the Spyglass Villas residents, and the fact that the above condition was not mentioned indicates nothing less than that this was a nonexistent problem. Moreover, rather than threatening to cancel Respondent's service,⁴⁸ said letter merely, and politely, requests that Respondent rectify the situation. In these circumstances, while Ramirez did not appear to be testifying candidly in describing what the Spyglass Villas problem entailed, I do believe that Respondent clearly and egregiously exaggerated the extent and seriousness of the problem. Based on the foregoing, the conclusion is warranted that Respondent's decision⁴⁹ to terminate Jesus Ramirez was based on behavior, which it had heretofore condoned, and on service complaints, about which it mendaciously embellished the magnitude of the problem in order to justify discharge, and, accordingly, I do not believe that, absent Ramirez' support for the Union, Respondent would have done so. Therefore, I find that Respondent's discharge of Ramirez was violative of Section 8(a)(1) and (3) of the Act.

With regard to alleged discriminatee Miguel Salas and Respondent's proffered rationale for discharging him, I note that Salas had no recollection of any complaints by a resi-

⁴⁷ Ramirez' testimony was uncontroverted that Tony Rodriguez merely questioned him as to why he retained the canceled or stop service address cards in his route book and instructed him to "clean out" his route book. Rodriguez was not called as a witness by Respondent.

⁴⁸ Frank Uicab asserted that Respondent's sales manager also spoke to the Spyglass Villas management company in order to convince it to retain Respondent's service; however, the latter individual was not called as a witness, by Respondent, to corroborate Uicab.

⁴⁹ As stated above, I was not impressed with Dennis Chiappetta's candor and, therefore, I do not rely on his recitation of the reasons for the termination of Ramirez.

dential customer named Gonzalez, including that which assertedly precipitated his discharge, Gonzalez' July 28, complaint that Salas had left garbage scattered all over his street and had a bad attitude, that the alleged discriminatee conceded negligently causing his July 3 accident, and that, except for denying the number of such, did not dispute having received numerous overweight load citations during 1992. However, I also note that Respondent's defense rests, almost entirely, on the testimony of Frank Uicab and, inasmuch as I believe that the testimonial demeanor of Respondent's field supervisor was that of a decidedly dishonest witness and that he dissembled regarding virtually all matters about which he testified, including embellishing certain matters in order to buttress Respondent's defense, I have absolutely no confidence in his veracity and am loath to accept all aspects of his testimony with regard to the Gonzalez July 28, complaint—in particular his assertions as to what he observed at Gonzalez' residence and the customer's threat to terminate Respondent's service. Likewise, no credence may be placed on the uncorroborated assertion of Chiappetta, who was inherently unreliable, that there had been previous confrontations between the customer and Salas. Further, while, during 1991 and 1992, Respondent did, in fact, terminate employees for similar conduct, Chiappetta conceded that, in 1992, driver Ron Santallan was not terminated despite being given a written reprimand over a customer complaint about his abusive language and being involved in an at-fault accident the next day and driver Mario Morales was not discharged despite a complaint, from an irate customer, that he had backed his truck into the customer's garage door, causing extensive damage, and his subsequent reprimand for failing to report the accident. Moreover, I cannot neglect the fact that, no more than a month prior to investigating the Gonzalez complaint and being involved in the decision to terminate the alleged discriminatee, Uicab had accused Salas of being one of the leaders of the Union's organizing campaign and had warned that Respondent would terminate employees who were "mixed up" with the Union. Based on the foregoing and the record as a whole, I conclude that the Gonzalez complaint, the admitted precipitating reason for Salas discharge was not nearly as serious as asserted by Respondent and that Respondent does not consistently discharge employees for similar conduct and, as I do not believe, in these circumstances, that Respondent has established herein that it would have terminated Miguel Salas absent his suspected sympathies and support for the Union, find that his termination was violative of Section 8(a)(1) and (3) of the Act.⁵⁰

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

⁵⁰ Assuming *arguendo* that the General Counsel had established a *prima facie* showing that Respondent was unlawfully motivated in terminating Trinidad Rodriguez on June 12, I believe that Respondent did establish that he would have been terminated notwithstanding his support for the Union. Thus, there is no dispute that he had been involved in two accidents during May, and the record, as a whole, warrants the conclusion that he was at fault in both. As the record also establishes that Respondent had terminated other employees for multiple accidents within a short time period, it is clear that Rodriguez would have been terminated notwithstanding whatever support Respondent believed he may have manifested for the Union.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act by terminating employee Jesus Ramirez on June 17, employee Jesus Rosas on July 21, and employee Miguel Salas on August 4, because each engaged in activities in support of the Union.

4. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by engaging in surveillance of its employees' activities in support of the Union.

5. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by interrogating employees concerning their sympathies and activities in support of the Union.

6. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by creating in the minds of its employees the impression that it had been engaged in surveillance of their activities in support of the Union.

7. Respondent engaged in conduct violative of Section 8(a)(1) of the Act by warning employees that they would be fired for supporting the Union and engaging in activities in support of the Union.

8. The aforementioned unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Unless specifically found above, Respondent engaged in no other unfair labor practices.⁵¹

REMEDY

Having determined that Respondent engaged in serious unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist from engaging in such conduct and to take certain affirmative action designed to effectuate the purposes and policies of the Act. I have concluded that Respondent unlawfully terminated employee Jesus Ramirez on June 17, 1992, employee Jesus Rosas on July 21, 1992, and employee Miguel Salas on August 4, 1992, because of the activities of each in support of the Union. Accordingly, I shall recommend that Respondent be ordered to reinstate each discriminatee to his former position of employment or, if such no longer exists, to a substantially equivalent position. Further, I shall recommend that Respondent be ordered to make each whole for any lost earnings, he may have suffered as a result of the discrimination practiced against him, as proscribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Isis Plumbing Co.*, 138 NLRB 710 (1963), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁵² Additionally, I shall recommend that Respondent be ordered to post a notice, setting forth its obligations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵³

⁵¹ In his posthearing brief, counsel for the General Counsel withdrew the allegation that Steve Uribe engaged in conduct violative of Sec. 8(a)(1) of the Act by his comment to Jesus Ramirez on June 17, "What's happening, Jesus?"

⁵² Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set forth in the 1986 amendment to 26 U.S.C. § 6621.

⁵³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

Continued

ORDER

The Respondent, Athens Disposal Company, Inc., City of Industry, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engaged in activities in support of the Union.

(b) Engaging in surveillance of its employees' activities in support of the Union.

(c) Interrogating employees concerning their sympathies and activities in support of the Union.

(d) Creating in the minds of employees the impression that it had been engaging in surveillance of their activities in support of the Union.

(e) Warning employees that they will be fired for becoming involved with and supporting the Union.

(f) In any like or related manner interfering with, coercing, or restraining employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer reinstatement to employees Jesus Ramirez, Jesus Rosas, and Miguel Salas to their respective former positions of employment or, if such jobs no longer exist, to substantially equivalent positions of employment and make each whole for the discrimination against him in the manner set forth in the remedy section of the decision.

(b) Expunge from its files any reference to the respective June 17, July 21, and August 4, 1992, discharges of Ramirez, Rosas, and Salas and notify each, in writing, that this has been done and that evidence of the discharge of each will not be used as a basis for any future personnel action against him.

(c) Preserve and, on request, make available to Board agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports; and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at Respondent's office and truck depot facility in City of Industry, California, copies of the attached notice marked "Appendix."⁵⁴ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and

adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁵⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint, insofar as it alleges that Respondent violated Section 8(a)(1) and (3) of the Act by terminating employee Trinidad Rodriguez and Section 8(a)(1) of the Act by other acts and conduct, be dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT interrogate our employees with regard to their union sympathies or activities.

WE WILL NOT create in the minds of our employees the impression that we are engaging in surveillance of their union activities.

WE WILL NOT threaten to fire our employees in order to induce them not to engage in any union activities.

WE WILL NOT in any like or related manner interfere with, coerce, or restrain our employees in the exercise of the rights granted them by Section 7 of the Act.

WE WILL offer Jesus Ramirez, Jesus Rosas, and Miguel Salas immediate and full reinstatement to their former jobs or, if these jobs no longer exist, to substantially equivalent ones, without prejudice the seniority or other rights or privileges previously enjoyed by each and WE WILL make each discriminatee whole for any loss of earnings and other benefits resulting from his discriminatory layoff, less any net interim earnings, plus interest. WE WILL notify Jesus Ramirez, Jesus Rosas, and Miguel Salas, in writing, that we have removed from our files any reference to their respective discriminatory discharges and that the respective discharges will not be used against them in any way.

ATHENS DISPOSAL COMPANY, INC.